

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NOLAN CARROLL,

Plaintiff,

v.

THE CITY OF LAKE FOREST PARK, et
al.,

Defendants.

CASE NO. C13-1633-JCC

ORDER

This matter comes before the Court on Defendants’ motion for summary judgment (Dkt. No. 26). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion in part and DENIES the motion in part for the reasons explained herein.

I. BACKGROUND

Plaintiff Nolan Carroll (“Carroll”) was a maintenance employee for the Public Works Department of the City of Lake Forest Park (“the City”). He is suing the City and Defendants Frank Zenk (“Zenk”) and Scott Walker (“Walker”) for disability discrimination, failure to accommodate, retaliation, 42 U.S.C. § 1983 violations, FMLA discrimination, and wrongful termination in violation of public policy. Defendant Zenk is the Public Works Director for the City, and supervises Defendant Walker, who is the Public Works Superintendent. Walker was

1 Plaintiff's immediate supervisor at the Public Works Department.

2 Carroll suffers from a variety of medical conditions. He alleges that he was subjected to a
3 series of harsh, humiliating, and discriminatory job actions, culminating in his unlawful
4 termination, in retaliation for having sought Union assistance in dealing with alleged racist and
5 discriminatory remarks made by Adam Brataan, another Public Works Department employee.
6 Defendants deny that they engaged in any unlawful conduct, and claim that Carroll was
7 terminated because of his continuing refusal to follow direction and procedure. Defendants move
8 to dismiss all of Carroll's claims with prejudice as a matter of law.
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10 **II. DISCUSSION**

11 **A. Summary Judgment Standard**

12 Generally, "the plaintiff in an employment discrimination action need produce very little
13 evidence in order to overcome an employer's motion for summary judgment. This is because the
14 ultimate question is one that can only be resolved through a searching inquiry—one that is most
15 appropriately conducted by a factfinder, upon a full record." *Chuang v. Univ. of California*
16 *Davis, Bd. of Trustees*, 225 F.3d 1115, 1124 (9th Cir. 2000) (citation and internal quotation
17 marks omitted).
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19 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, "[t]he court shall grant
20 summary judgment if the movant shows that there is no genuine dispute as to any material fact
21 and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In making such
22 a determination, the Court must view the facts and justifiable inferences to be drawn there from
23 in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
24 242, 255 (1986). Once a motion for summary judgment is properly made and supported, the
25 opposing party "must come forward with 'specific facts showing that there is a *genuine issue for*
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1 trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting
2 Fed. R. Civ. P. 56(e)). Material facts are those that may affect the outcome of the case, and a
3 dispute about a material fact is genuine if there is sufficient evidence for a reasonable jury to
4 return a verdict for the non-moving party. *Anderson*, 477 U.S. at 248–49. Conclusory, non-
5 specific statements in affidavits are not sufficient, and “missing facts” will not be “presumed.”
6 *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888–89 (1990). Ultimately, summary
7 judgment is appropriate against a party who “fails to make a showing sufficient to establish the
8 existence of an element essential to that party’s case, and on which that party will bear the
9 burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

11 **B. Disability Discrimination Under the ADA**

12 Carroll claims that he was unlawfully discriminated against in violation of 42 U.S.C. §
13 12101 *et seq.*, the Americans with Disabilities Act (“ADA”). The parties agree that the
14 appropriate legal framework for considering Carroll’s ADA disability discrimination claim is
15 that established by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d
16 668 (1973). *See Hines v. Todd Pac. Shipyards Corp.*, 127 Wn. App. 356, 370-71 (2005)
17 (“Washington courts have adopted the *McDonnell Douglas/Burdine* three-part burden allocation
18 framework for disparate treatment cases.”). Specifically, Carroll must show
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20 that (1) he belongs to a protected class; (2) he was qualified for the position; (3) he was
21 subject to an adverse employment action; and (4) similarly situated individuals outside
22 his protected class were treated more favorably. The burden of production, but not
23 persuasion, then shifts to the employer to articulate some legitimate, nondiscriminatory
24 reason for the challenged action. If the employer does so, the plaintiff must show that the
25 articulated reason is pretextual either directly by persuading the court that a
26 discriminatory reason more likely motivated the employer or indirectly by showing that
the employer's proffered explanation is unworthy of credence.

Chuang, 225 F.3d at 1123-24.

1 There is no question that Carroll belongs to a protected class or that he was qualified for
2 his position. Defendants argue that Carroll cannot make out a prima facie case for discrimination
3 because he was not subjected to an adverse employment action based on his disability. Instead,
4 Defendants claim that Carroll was disciplined solely for his failure to follow directions or
5 procedures, and that this failure was unrelated to Carroll's medical condition.

6 The Court finds that there are genuine issues of material fact as to whether Carroll was
7 terminated for reasons linked to his disability, whether the non-discriminatory explanation
8 provided by Defendants is merely pretextual, and whether similarly situated employees outside
9 of Carroll's class were treated preferentially. Summary judgment is therefore inappropriate for
10 this issue. *See Gambini v. Total Renal Care, Inc.*, 486 F.3d 1087, 1094 (9th Cir. 2007) ("a
11 decision motivated even in part by the disability is tainted and entitles a jury to find that an
12 employer violated antidiscrimination laws.")

13 **C. Disability Discrimination Under the WLAD**

14 Carroll claims that his termination constitutes unlawful discrimination in violation of
15 RCW 49.60 *et seq.*, the Washington Law Against Discrimination ("WLAD"). Carroll bears the
16 burden of establishing that he "(1) is in a protected class (disabled), (2) was discharged, (3) was
17 doing satisfactory work, and (4) was replaced by someone not in the protected class." *Roeber v.*
18 *Dowty Aerospace Yakima*, 116 Wash. App. 127, 135, 64 P.3d 691, 696 (2003). Carroll has not
19 provided any evidence indicating that he was replaced by someone not in his protected class.
20 Defendants are therefore entitled to summary judgment on this issue.

21 **D. Reasonable Accommodations Under the ADA and WLAD**

22 The ADA requires employers to make "reasonable accommodations to the known
23 physical or mental limitations of an otherwise qualified individual with a disability who is an
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1 employee, unless [the employer] can demonstrate that the accommodation would impose an
2 undue hardship on the operation of the [employer's] business.” 42 U.S.C. § 12112(b)(5)(A). In
3 order to prove discrimination based on a lack of accommodation under the WLAD, an employee
4 must show

5 (1) the employee had a sensory, mental, or physical abnormality that substantially limited
6 his or her ability to perform the job; (2) the employee was qualified to perform the
7 essential functions of the job in question; (3) the employee gave the employer notice of
8 the abnormality and its accompanying substantial limitations; and (4) upon notice, the
9 employer failed to affirmatively adopt measures that were available to the employer and
10 medically necessary to accommodate the abnormality.

11 *Riehl v. Foodmaker, Inc.*, 152 Wash. 2d 138, 145, 94 P.3d 930, 934 (2004)(citation omitted).

12 Carroll claims that Defendants refused to provide reasonable accommodations when he
13 informed them that his medical condition might lead to his being late to work as frequently as
14 twice a month. Defendants claim that they cannot be held responsible for failing to accommodate
15 Carroll's disability because Carroll “caused and encouraged a breakdown in the interactive [or
16 communicative] process with the City.” (Dkt. No. 26 at 17.) Defendants further contend that the
17 requested accommodation was not reasonable and that Carroll has not established that his
18 disability substantially limited his ability to perform his job as required to establish the second
19 element of his WLAD claim. (*Id.* at 17, 20.) Finally, Defendants argue that Carroll has not
20 produced evidence establishing that an accommodation was medically necessary. (Dkt. No. 33 at
21 3.)

22 The Court finds that there are genuine issues of material fact as to whether Carroll
23 provided the City with sufficient information for it to accommodate his disability. The Court
24 further finds that Defendants have not established that the requested accommodation was
25 unreasonable. Finally, the Court finds that there are genuine issues of material fact as to whether
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1 Carroll's disability substantially limited his ability to perform his job, and whether an
2 accommodation was medically necessary. Summary judgment is therefore inappropriate for
3 these claims.

4 **E. Family and Medical Leave Act**

5 Carroll claims that the City violated his rights by failing to provide him notice within five
6 business days of whether his leave request would be granted, as required by the Family and
7 Medical Leave Act ("FMLA"), 29 U.S.C. § 2615(a)(1). The City claims that it did not violate
8 Carroll's rights because Carroll failed to ensure that his doctor provided the City with
9 information necessary to properly consider his request, and because the City did respond to every
10 individual request by Plaintiff to have a designated period of time off counted as FMLA leave.
11 Defendants further contend that Plaintiff has failed to state a claim under the FMLA because he
12 cannot show he suffered any harm for any alleged FMLA violation.

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14 The Court finds that there are genuine issues of material fact as to all of Defendants'
15 contentions about this matter. Summary judgment on this issue is therefore denied.
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17 **F. Wrongful Discharge in Violation of Public Policy**

18 Defendants argue that Carroll's claim for wrongful discharge in violation of public policy
19 should be dismissed as duplicative because Carroll is also pursuing remedies for disability
20 discrimination under state and federal law. Because Carroll's claims are derived not only from
21 anti-discrimination laws but also from the Washington Public Employee Collective Bargaining
22 Act, Ch. 41.56 RCW, this argument is unavailing.

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24 However, Defendants are correct in pointing out that the Complaint did not allege that the
25 City interfered with his rights under his union contract. If Carroll wishes to add a new cause of
26 action based on interference with union activity, he must file a motion to amend his complaint.

1 Defendants would then have the right to file a motion to dismiss the claim.

2 **G. Claims Under 42 U.S.C. § 1983 and for Retaliation Under the ADA and the**
3 **WLAD**

4 Carroll withdraws his claims under 42 U.S.C. § 1983 and for retaliation under the ADA
5 and WLAD. The Court therefore denies as moot Defendants' request for summary judgment on
6 these issues.

7 **H. Arbitration Decision**

8 Defendants object to the Court's consideration of the arbitration decision provided by
9 Carroll, and move to strike it from the record. (Dkt. No. 33 at 6.) The arbitration decision did not
10 play a role in the Court's assessment of the issues at hand, so the motion is denied as moot.
11 However, this issue has not been fully briefed, and the Court acknowledges that Defendants have
12 reserved their right to move in limine to exclude the arbitration decision prior to trial. (Dkt. No.
13 33 at 7.)
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15 **I. Inadmissible Evidence**

16 Defendants move to strike a series of statements from the record because they are
17 "inadmissible evidence." (Dkt. No. 33 at 10.) The Court finds sufficient support for its rulings
18 without considering these statements, so the motion is denied as moot.
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20 **III. CONCLUSION**

21 For the foregoing reasons, Defendants' motion for summary judgment (Dkt. No. 26) is
22 GRANTED in part and DENIED in Part. Specifically:

- 23 1) Plaintiff's claims under 42 U.S.C. § 1983 and for retaliation under the ADA and
24 WLAD are DISMISSED with prejudice.
25 2) Plaintiff's claim for disparate treatment discrimination under the WLAD, based on his
26 termination, is DISMISSED with prejudice.

1 3) Defendants' motion for summary judgment is DENIED as to all other claims.
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3 DATED this 6th day of January 2015.
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10 John C. Coughenour
11 UNITED STATES DISTRICT JUDGE
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